

10/18/70

Dear Bud,

I intended writing you shortly after Jim left Friday, when I read your by then already filed answer to the Government's motion to dismiss in 2301-70 the spectro suit. It has not been possible, and with what lies ahead today I'll not be able to reread it now. However, that is a very good document, aside from a flagrant gaffe at the very beginning, one that is unnecessary and illustrates rather well on the complaisance in my letter of a week ago and one of the hazards inherent in the lack of communication and the preclusion of conferences.

As you told me, there is little new in the response, and I am, naturally, tickled that consulting the cited authorities, as I suspected on no more than a first, hasty perusal of their motion more than confirms my hunch that the ~~xxx~~ authorities are for us rather than against.

First for the gaffe. "...a fragment or fragments were 'recovered' from a piece of curbing in Dealey Plaza, but it is plaintiff's belief that this ~~was~~ was as late as July, 1964." No fragment or fragments were recovered from that curbstone. And this is the one part of your response that is not done well, really extremely well. It is done inadequately, probably because of the speed with which you had to work. (This would not have been the case if we'd conferred, with or without your having had the memo I sent you, a more careful reading of which should have given you an understanding of the point I think essential in this aspect.)

Aside from giving you as complete an analysis of the entire government response as I could with the very difficult deadline you had to impose, not having kept out appointment on the 9th, for reasons I now understand, having been told by Paul V of your luncheon arrangements that day, I was focusing on and believed and believe we must concentrate on the integrity of the government's word. You appeared, in the few moments we spent together on the 9th, to have had no recall of our previous and rather lengthy discussion of this.

Which brings up another point. When as aboy I was able to attend big-league ball games, I recall hawkers selling scorecards with a pitch to the effect one couldn't follow the game without the card. We need some such card, for the constant and unannounced switching of signals is bewildering, costly and counter-productive. When you first said you'd handle the spectro suit, you asked me to prepare a draft. I did, with the approach that we'd load it with information that would inform, if not intimidate, government counsel, the court and the press. In preparing this, without consultation with me, you decided upon what you called a "bare-bones" approach. You will recall that when I saw it, even though the approach was contrary to mine, I agreed, suggesting only the correction of one or two I think now minor errors. You then said we tell them nothing until we get in court. I then showed you how, with this approach, we would have an added case of perjury, which should be helpful this time and I emphasize all other such cases. I agreed, when you estimated that this case would go to the Supreme Court and you'd take it there, to follow your approach. With this case, I came to agree that the approach you used is the better one. Suddenly I now found you have abandoned this and thrown away the certainty of either a case of perjury or as an alternative a victory for us. Which leads back to the point about the integrity of the government word.

As I told you on the hasty reading of their motion, was I then, almost immediately wrote you, and as I amplified, including in what I gave Jim, but, having never been told of time requirements, too late, apparently, there is

nothing - but absolutely nothing - to meet the minimum requirement imposed by the law upon the defense but the entirely unsupported government word. I cited the AG's memo on the law on this. The government must, affirmatively, prove the relevance of the exemption, and this, I believe, it must do before going any further. Thus I suggested that our response should specify and my draft so read, that to begin with, before plaintiff made any other response, the court must require this proof of the defendant. If, as a matter of law, I am here in error, it would help us both and certainly clarify my understanding for the future if you would correct me.

Experience could not be more persuasive that everything we can require the government to commit to paper helps us and hurts them. I can think of no single exception to this. And we have no urgent need to accomplish the purposes of this or any other suit overnight (as proof of which I cite your failure to go over the drafts for so very long a period of time. Were there this urgency, in your own mind, other things would not have taken precedence). Let me illustrate this with some specific examples.

I ask, after we got Kleindienst's crazy first letter, that you write other letters (some of which I then drafted). This is how we got the clinchers in that suit, from Lyster and Mitchell. I ask that you write Mitchell for Ray's correspondence, and need I elaborate on the significance of that response? I think it unnecessary to go into the great future value of the long string of letters, especially from Eardley, all false and each disproving all the others.

So, in strategy and in tactics, in the absence of some compelling legal reason, I think it was an error not to restrict this initial response to what would require the government to provide this proof of relevance of the only claim to exemption made and with it provide us with a clear case of perjury. You were excited about this when what now seems so long ago I first showed it to you, when I showed you the Jevons affidavit in the first Nichols case, the memo by which this was done, and the Hoover testimony you were cited. That would be, in my layman's opinion, an incredibly strong thing to present in court and to the press thereby, and I have gotten a valid opinion from Paul on it.

This should be enough to explain my bewilderment at the sniffling on which the client is not consulted and to make comprehensible what I've often said, that too much of the too little time I have is needlessly wasted. I do believe, whether or not it is the custom in a lawyer-client relationship, that we should always consult before any papers are filed. The case of the non-existent curbstone fragments ought be sufficient illustration of the simplest expression of the belief that this is a minimal need.

I do not here intend criticism of your lack of knowledge of what to me is one of the more basic and unequivocal facts of the assassination. We are all prone to such things, including me, which is one of the reasons I have been so patient with the long-delayed revisions of my drafts of those suits that are to be filed pro se. As you have heard me say, sincerely and repeatedly, Jim has done a first-rate job. Yet, when he has again done so very well in the Ferrie revision, I have found error that we will go over when he has completed it. I've indicated some to him.

In every case, the integrity and dependability of the government word will be an important factor. I think that had we ridiculed this as effectively and politely as was possible, in their not even knowing the date of the assassination or the most elemental facts about the basis of the investigation and their acting about these things so grievously misinformed the court, in a motion in which we also point out and then ask for the most basic and missing prerequisite of the law, in

this case and every one to follow our position and that of other possible Freedom of Information litigants would be much, much better. I also have the faith I find lacking in lawyers, that it is essential to build a solid record, especially because our objectives are not limited to this single action. Aside from this (and I recognize others, including you, may and have the right to disagree), I believe that more than ever today we must reestablish the credibility the original critics did achieve, only to have it destroyed for them by the most inexcusable behavior on the parts of late-comers whose motives are neither in question or relevant. We have to earn a credibility, against great odds, for the media begins as a partisan of the other side.

I return to the point about conferences because I think it very important. I can think of no single case where any single question came up in any matter dealing in any way with any litigation where there was any kind of serious problem or any disagreement, no matter how minor, between us. In every case we not only agreed on whatever we then did, but we were both in accord with it. In no case did either of us agree unwillingly. I think this is an exceptional and an excellent record. The fact that when we do sit down and discuss questions, from the record, we always agree and that, from this same record, in each case we reached the determination that was correct, seems like a powerful argument for always having such a conference. As you know, when you cannot come here, I always go to see you and I have not once failed to keep an appointment, having on only a single and very unhappy occasion even been slightly late for any. The problem here is those things you have undertaken subsequent to pre-existing commitments. I will not belabor this point, but I again encourage you to consider the possibility that, aside from the possibility of harm to these pre-existing commitments there is not the same inherent jeopardy to you. I believe this to be the case. That you have avoided my very obvious efforts to go into this with you is your affair. I am deeply concerned about the potential. If you find time to think about this, I ask you to consider also the previous occasions on which I have expressed such apprehensions and whether or not, on those and occasions, I was right.

"One of us can cover everything that can be argued to be worth attention. The first decision of this kind I had to make related to Ruby. I felt there was, immediately, least likelihood of accomplishing constructive results by major effort in that area. The record, incidentally, proves my judgement correct. More recently, I have felt the same way about Bobby, even though, to the best of my knowledge, I was the only one of us to both feel he would be assassinated and to have committed this to writing - and to have spoken this belief on countless public occasions, to and including the night before it happened. My original estimates have some confirmation, such as I find in Kaiser, having read the condensation. Quite the contrary of the persisting fictions about me, as soon as I saw this condensation, I made two efforts to get in touch with him so that I can give him the considerable data I have that is relevant to his writing and the gaps in it. If you've ever read COUP, you'd know some of this. I have more. You are now off on a Bobby kick. I think this is to the detriment of other commitments you have already made and when the timing is quite wrong, but I cannot tell you what to do or not to do. I'll be quite happy if you succeed, but not if you succeed in getting started in a futility. There is a tide in the affairs of men, and I think it has not yet risen in this one. I have information that may be relevant and that I've not written, but I'm not encouraging any of us by spissing it around. If there seems some likelihood of accomplishing something, I will, of course. I have made no effort to corroborate it, but it is, on the face of it, not unreasonable and may be the missing clue.

Despite the fictions about me that you and others find satisfying when we disagree, I have seen to it in this case as in others that I am not the sole possessor of the information, so it will always be subject to retrieval if needed at a correct time.

Inherent in all of this is estimates of my judgement. Here what is involved is not so much my judgement per se, as a general thing, but on a more limited level, the immediate questions. To that already cited, I add your own changed appraisal of the Spectros suit, as conveyed to me on Friday by Jim. He now says we'll win this in the first court. I did to begin with, even after you said we had no chance. I then said that to which I cannot today add: we ~~must~~ cannot lose, except to corruption or our own error. (The only question in my mind is to do win less than we can.) Nothing has changed since our initial discussion except one thing: you've gone into it a little more. So, what am really saying in asking estimate of my judgement is that I have factual knowledge others, including you, do not have. There is no substitute for it. Other factors, one being luck, another power, are relevant, but nothing substitutes for fact. We can make our best judgements based on it. My record, which is far from perfect but I think rather good, stems from this knowledge of the fact. That, in turn, comes from the time I have spent acquiring it, time nobody else has taken.

This, in turn, is one of the more bitter aspects of the needless wastes of my time, for all that I waste is time I cannot spend constructively, in either committing to paper what I have or in seeking more. In each case, it is fact that without the most minor deviation I communicate to others, so they, in turn, can apply their intelligences to it and so that they can use it. As I age at an accelerated rate and weary with it, wastes of time become more oppressive to me and more of an abuse.

There are those who infrequently to my face and not infrequently otherwise accuse me of being dominated by ego. This is a hazard - a great hazard - to all of us and to what we seek. To deny ego is insane. In my own case, I have a long and continuing record I think proves the charge against me largely false. However, I think this is a human factor all of us should always consider, more than ever when there are disputes among us. As this applies to me, so also does it apply to you, as a person and to you not improper ambitions for your committee. Each time I acquire material I think of value, I confront this, hence in sharing everything, without exception, with others who may vary from item to item, I think I have an adequate answer. In turn, I feel I have cause to wonder why others make the charge and seem to believe it.

Not unrelated is your unwillingness to believe what I have told you of Flammonde, his record and my apprehensions. It is, of course, easier for you to believe what you find congenial by refusing to look at the record. I had a carbon of my recent letter to Flammonde on the envelope of materials I had laid aside to give Jim, as he can tell you. It was only ~~that~~ that I learned that Flammonde sent you a copy. Jim was due here Tuesday, which I ~~why~~ I didn't mail that and the other things. As Flammonde never responded to the original charges, I assure you only because he could not, he remains silent. Whatever he tells you, not matter how friendly he is and how reasonable whatever ~~he~~ he gives you is, the simple fact is that he has not in any way responded to me, not by mail, not by phone, not through a mutual friend. He is without complaint about the seriousness of what I say and has never made even a simple, pro forma denial, without even ignoring the record I cited so long ago. Nobody calls me a crook and finds me silent, and I think the same would be true of you.

Because you have seen to it that we have no time to discuss the problems we share and have not, where it is possible to consult records, familiarized yourself with these records, I feel I must take time for letters which are at best inadequate and cannot begin to be as comprehensive. They also take time that might be better spent in other endeavor. They have but one merit when there is disagreement, they make a record. The great disadvantage of a record is that it sometimes has to be used. It would be better if, as was the case with the Ray suit, we could work these things out in the usual way. If we do not or cannot, it will be neither from my unwillingness nor my failure to do anything you asked of me, from going to Washington to doing considerable time-consuming work in which, apparently, you lost interest almost as soon as you made the request. You may be unaware of these things, but they are fact. One example is the work you asked me to do on the two sets of records in the Ray matter. You asked me to analyze them, said you'd come up to go over what I did, and that day has never come. I have not gone over my work to see whether or not it handicapped you or Ray's defense not to use it, but that work is dated in April. This comes to mind only because I was able to get more file-cabinet space and was able to file this. It has been on a shelf from then until a week ago.

Before ending this already too-long letter, I return to the question of ego and ask that you ask yourself if either of the two stories, in the Manchester Union-Leader or the National Enquirer, is accurate, honest and much more than an indulgence of ego. Or if you ever asked yourself how others with whom you should be working cooperatively would or should take them? If you complain that others do not cooperate with your committee, ask how this kind of puffery is calculated to encourage cooperation.

There will, at some point, I presume, be some kind of response to the papers you filed Friday. I hope I do not again find out about them only by accident and that we have adequate time for the preparation of whatever we must then do.

Sincerely,

Harold Weisberg